

Assembly Bill No. 2541

Passed the Assembly August 29, 2008

Chief Clerk of the Assembly

Passed the Senate August 26, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 851.90 of, to amend and renumber Section 1000.8 of, and to add and repeal Chapter 2.6 (commencing with Section 1000.8) of Title 6 of Part 2 of, the Penal Code, relating to reentry.

LEGISLATIVE COUNSEL'S DIGEST

AB 2541, Bass. Reentry courts: deferred entry of judgment.

Under existing law, the Department of Corrections and Rehabilitation is required to establish 3 pilot programs to provide intensive training and counseling for female parolees to assist in the successful reintegration of those parolees into the community, a pilot reentry program in East Palo Alto, and a pilot prerelease parole program in Alameda County. Existing law also requires the department to provide various education, drug treatment, and skills training to inmates and parolees. Existing law further requires the establishment of a Reentry Advisory Committee to advise the secretary on all matters related to the successful statewide planning, implementation, and outcomes of all reentry programs and services provided by the department.

This bill would authorize a superior court, until January 1, 2012, to create a deferred entry of judgment reentry program targeted at preventing recidivism among nonviolent low-level drug sales offenders. The bill would specify the characteristics of that program and the process for eligibility for the program.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The San Francisco District Attorney's office has developed an effective reentry program, Back On Track. Among low-level, nonviolent drug sellers, the three-year recidivism rate for Back On Track participants is significantly lower than the 53 percent recidivism rate for the same population in state prison. As a result, the Back On Track program has been selected as a national model.

The act is intended to facilitate the replication of this successful program.

(b) Successful reentry models combine a continuity of services before and after release and legal mechanisms for holding former offenders accountable for becoming self-sufficient and living crime free.

(c) The most successful models for preventing recidivism include public-private partnerships among law enforcement, government agencies, business and labor associations, private employers, and community-based organizations, formed to create living wage employment opportunities for eligible former offenders and to take advantage of existing programs and incentives for hiring former offenders.

SEC. 1.5. Section 851.90 of the Penal Code is amended to read:

851.90. (a) (1) Whenever a person is diverted pursuant to a drug diversion program administered by a superior court pursuant to Section 1000.5 or is admitted to a deferred entry of judgment program pursuant to Section 1000 or 1000.8, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the records of the arresting agency and related court files and records with respect to the diverted person, the judge may order those records and files to be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case.

(2) If the order is made, the clerk of the court shall thereafter not allow access to any records concerning the case, including the court file, index, register of actions, or other similar records.

(3) If the order is made, the court shall give a copy of the order to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge.

(4) The defendant may, except as specified in subdivisions (b), (c), and (d), indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or granted statutorily authorized drug diversion or deferred entry of judgment for the offense.

(5) Subject to subdivisions (b), (c), and (d), a record pertaining to an arrest resulting in the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program

shall not, without the defendant's permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

(6) Sealing orders made pursuant to this subdivision shall not be forwarded to the Department of Justice to be included or notated in the department's manual or electronic fingerprint image or criminal history record systems. Any sealing order made pursuant to this subdivision and received by the Department of Justice need not be processed by the department.

(b) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice in response to any peace officer application request, and that, notwithstanding subdivision (a), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(c) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice or the court in which the matter was heard in response to any subsequent inquiry by the district attorney, court, probation department, or counsel for the defendant concerning the defendant's eligibility for any statutorily authorized drug diversion or deferred entry of judgment program in the future.

(d) A sealing order made pursuant to this section shall not apply to any record or document received or maintained by the Department of Justice; the court shall advise a defendant that, notwithstanding the issuance of a sealing order pursuant to this section, the Department of Justice shall continue to be able to maintain and disseminate any records or documents received or maintained by the department, as authorized by law.

SEC. 2. Section 1000.8 of the Penal Code is amended and renumbered to read:

1000.6. (a) Where a person is participating in a deferred entry of judgment program or a preguilty plea program pursuant to this chapter, the person may also participate in a licensed methadone

or levoalphacetylmethadol (LAAM) program if the following conditions are met:

(1) The sheriff allows a methadone program to operate in the county jail.

(2) The participant allows release of his or her medical records to the court presiding over the participant's preguilty or deferred entry program for the limited purpose of determining whether or not the participant is duly enrolled in the licensed methadone or LAAM program and is in compliance with deferred entry or preguilty plea program rules.

(b) If the conditions specified in paragraphs (1) and (2) of subdivision (a) are met, participation in a methadone or LAAM treatment program shall not be the sole reason for exclusion from a deferred entry or preguilty plea program. A methadone or LAAM patient who participates in a preguilty or deferred entry program shall comply with all court program rules.

(c) A person who is participating in a deferred entry of judgment program or preguilty plea program pursuant to this chapter who participates in a licensed methadone or LAAM program shall present to the court a declaration from the director of the methadone or LAAM program, or the director's authorized representative, that the person is currently enrolled and in good standing in the program.

(d) Urinalysis results that only establish that a person described in this section has ingested or taken the methadone administered or prescribed by a licensed methadone or LAAM program shall not be considered a violation of the terms of the deferred entry of judgment or preguilty plea program under this chapter.

(e) Except as provided in subdivisions (a) to (d), inclusive, this section shall not be interpreted to amend any provisions governing deferred entry and diversion programs.

SEC. 3. Chapter 2.6 (commencing with Section 1000.8) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.6. DEFERRED ENTRY OF JUDGMENT REENTRY
PROGRAM

1000.8. A superior court may create a deferred entry of judgment reentry program targeted at preventing recidivism among nonviolent low-level drug sales offenders. No defendant who has

been convicted of a violation of an offense enumerated in subdivision (c) of Section 290 or in Section 1192.7 shall be eligible for the program established in this chapter. When creating this program, the prosecuting attorney, together with the presiding judge and a representative of the criminal defense bar selected by the presiding judge of the superior court may agree in writing to establish a “Back on Track” deferred entry program pursuant to the provisions of this chapter. The agreement shall specify which low-level drug sales offenses under the Health and Safety Code will be eligible for the program and a process for selecting participants. The program shall have the following characteristics:

(a) A dedicated calendar.

(b) Leadership by a superior court judicial officer who is assigned by the presiding judge.

(c) An appropriate level of transitional services for each participant, based on available resources from county and community reentry providers and other agencies. Local justice agencies as well as county health, mental health, and human services agency representatives shall participate with the superior court in developing a plan regarding the scope and availability of resources that will be made available to participants in this program. The transitional services may include the following:

(1) Job training, readiness, and placement.

(2) Life skills and “soft” skills training.

(3) Mental health treatment.

(4) Substance abuse treatment.

(5) Assistance with obtaining identification cards and driver’s licenses.

(6) Assistance with expungement of criminal and arrests records and other barriers to employment, where appropriate.

(7) Parenting skills and assistance with child support obligations.

(d) Clearly defined criteria for successful progress and completion of the program.

(e) Legal incentives for defendants for progress and successful completion of the program, including modification of conditions or terms of probation, dismissal or reduction of criminal charges upon successful completion of the program, and assistance with expungement of prior criminal convictions.

(f) Graduated sanctions and frequent, ongoing appearances before the court regarding the progress of the defendant to ensure

that the defendant successfully completes the program and complies with any other terms and conditions that will optimize the likelihood that the defendant will complete the program. The court may use available legal mechanisms including return to custody if necessary, for failure to comply with the supervised plan.

(g) The program may develop a local, public-private partnership between law enforcement, government agencies, private employers, and community-based organizations for the purpose of creating meaningful employment opportunities for eligible former offenders and to take advantage of existing programs and incentives for hiring defendants participating in the program.

1000.9. The prosecuting attorney shall determine whether a defendant is eligible for a deferred entry of judgment reentry program.

(a) If the prosecuting attorney determines that this section may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of that determination. This notification shall include the following:

(1) A full description of the procedures for deferred entry of judgment.

(2) A general explanation of the role and authority of the prosecuting attorney, the program, and the court in the process.

(3) A clear statement that in lieu of trial, the court may grant deferred entry of judgment with respect to the current crime or crimes charged if the defendant pleads guilty to each charge and waives time for the pronouncement of judgment, and that, upon the defendant's successful completion of the program and the motion of the prosecuting attorney, the court will dismiss the charge or charges against the defendant and the provisions of Sections 851.90 and 1203.4 will apply.

(4) A clear statement that failure to comply with any condition under the program may result in the prosecuting attorney or the court making a motion for entry of judgment, whereupon the court will render a finding of guilty to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

(5) An explanation of criminal record retention and disposition resulting from participation in the deferred entry of judgment program and the defendant's rights relative to answering questions

about his or her arrest and deferred entry of judgment following successful completion of the program.

(b) If the prosecuting attorney determines that the defendant is eligible for the program, the prosecuting attorney shall state for the record the grounds upon which the determination is based and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment.

(c) If the prosecuting attorney determines that the defendant is ineligible for the program, the prosecuting attorney shall state for the record the grounds upon which the determination is based and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal. If the prosecuting attorney does not deem the defendant eligible, or the defendant does not consent to participate, the proceedings shall continue as in any other case.

(d) Upon a motion by the prosecuting attorney for an entry of judgment, before entering a judgment of guilty, the court may hold a hearing to determine whether the defendant has failed to comply with the program and should be terminated from the program.

1000.10. The following provisions apply to this chapter:

(a) A defendant's plea of guilty shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1000.3.

(b) Counties that opt to create a deferred entry of judgment reentry program pursuant to Section 1000.8 of the Penal Code shall not seek state reimbursement for costs associated with the implementation, development, or operation of that program.

(c) Local law enforcement agencies and counties administering the programs may seek state, federal, or private funding for the purpose of implementing the provisions of this chapter.

1000.11. This chapter shall remain in effect until January 1, 2012, and as of that date is repealed, unless a later enacted statute deletes or repeals that date.

Approved _____, 2008

Governor